



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** December 8, 2009

**TO:** Mayor and Councilmembers

**FROM:** Planning Division, Community Development Department

**SUBJECT:** Medical Marijuana Dispensary Suspension Ordinance

### RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Temporarily Suspending the Opening or Operation of New Medical Marijuana Dispensaries Otherwise Allowed Under Santa Barbara Municipal Code Chapter 28.80 on an Interim Basis.

### DISCUSSION:

#### Background

On July 28, 2009, the City Council directed the Ordinance Committee to consider possible revisions to the City's Medical Cannabis Dispensary Ordinance, SBMC Chapter 28.80. The Ordinance Committee met several times and took a great deal of public comment and, ultimately, provided direction to City Staff on the significant proposed revisions to the City's Dispensary Ordinance. A draft ordinance containing the proposed revisions has now been forwarded to the Planning Commission for a hearing on their recommendations to the City Council, as required by the state Planning and Zoning Law (Government Code §§65000.)

On November 17, 2009, the City Council also directed the Ordinance Committee to consider further amending the Medical Cannabis Dispensary Ordinance to accomplish the following: 1. to make it more clear that, pursuant to state law (i.e., the Compassionate Use Act), the City only allows the cultivation and distribution of medical marijuana through cooperatives or collectives; and 2. to develop additional City regulations for storefront cooperatives and collectives such that they are required to operate as true collectives/cooperatives in a manner consistent with the state Attorney General August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" – hereinafter the "Attorney General Guidelines."

As part of the November 17<sup>th</sup> action, the City Council also directed staff to return to Council as soon as possible with an ordinance suspending the opening of new medical marijuana dispensaries pending the consideration of these long-term SBMC Chapter

28.80 revisions. As discussed at the time, Staff understood that the Council wished to have this suspension apply to any dispensary which had not been fully permitted and received a final City building permit prior to the Council's November 17, 2009 decision to consider a suspension ordinance.

### **Approved and Pending Dispensary Applications**

This following is a list of City approved, disapproved, and pending dispensary applications.

#### *Approved and Operating:*

331 N. Milpas

#### *Approved with Building Permits Issued:*

500 N. Milpas (Building Permit issued 10/6/09. Most work is complete, but there are revisions that are currently in plan check)

629 Olive (Building Permit issued 11/18/09)

#### *Approved by Staff Hearing Officer, Pending Appeal at Planning Commission:*

741-781 Chapala  
302 E. Haley

#### *Pending Applications:*

430 Chapala  
826 Chapala  
234 E. Haley  
2915 De la Vina  
16 S. La Cumbre

#### *Approved by SHO but Disapproved by Planning Commission:*

2 W. Mission

### **Proposed Suspension Ordinance**

As directed by the Council on November 17<sup>th</sup>, the proposed ordinance suspending City approvals for new Medical Cannabis Dispensaries (attached to this Council Agenda Report) would prohibit the opening or operation of any new medical cannabis dispensary within the City unless the dispensary had received a City permit pursuant to SBMC Chapter 28.80 and had opened for care giving to "qualified patients" on or prior

to November 18, 2009 including those permittees who had obtained a final building permit for any necessary tenant improvements. Thus, the currently permitted dispensary at 331 North Milpas would be allowed to continue in operation. In addition, the “permitted” dispensaries at 500 North Milpas and 629 Olive which have already obtained City building permits would be allowed to open if they chose to do so. Otherwise, under the proposed suspension ordinance, other currently proposed dispensaries would not be allowed to open or operate until the City has finalized its consideration of the long-term revisions to the SBMC Chapter 28.80.

In addition, the draft ordinance contains an optional provision (*Section Three*) which directs the Community Development Department staff to also suspend the processing of pending or new dispensary applications while the Council considers possible revisions to the City’s regulations for medical marijuana. However, this provision, would allow potential dispensary operators to continue to apply and to have their application reviewed by CDD staff for completeness. This approach should allow an efficient process for the City to establish priorities among applicants for any particular potential dispensary location based on the date an application was deemed complete. Staff will seek Council direction on whether this optional provision should be included in the final draft of the Ordinance.

As a result, the proposed “suspension” ordinance would not affect approved dispensaries which are duly operating within the City as of November 17th, whether conforming or nonconforming, so long as they are legally permitted and continued to operate in the manner required by SBMC Chapter 28.80. It also would not alter the fact that City staff is pursuing and will continue to pursue code enforcement and possible police enforcement action against those dispensaries which are operating illegally within the City.

### **Proposed Interim Suspension Ordinance Extension.**

As required by the state Planning and Zoning law for “interim” zoning ordinances, the dispensary suspension ordinance will be effective for only 45 days from the date of its adoption – i.e., until the end of January 2010. Since Staff understands that it is the Council’s intent to restrict the operation of new dispensaries until after the public, the Planning Commission, and the City Council have had an adequate opportunity to fully discuss and consider revisions to the City medical marijuana regulations (especially with respect to whether storefront dispensaries are consistent the Attorney General’s Guidelines and are allowed by state law), staff believes that it will take longer than 45 days to draft and properly consider such revisions. Consequently, staff is planning on the need to return to the Council in January to extend the suspension ordinance for the full ten month and 15 day period allowed by section 65858 of the Government Code. However, if the medical marijuana ordinance revisions are adopted by the Council prior to the one-year suspension, the suspension will be superceded by the City’s new revised medical marijuana ordinance.

**PREPARED BY:** Danny Kato, Senior Planner

**SUBMITTED BY:** Paul Casey, Community Development Director  
Stephen P. Wiley, City Attorney

**APPROVED BY:** City Administrator's Office